

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Logue

February 21, 2013

An act to amend Sections 1626.2, 2290.5, 4980.01, 4982, 4989.54, 4992.3, 4996, and 4999.90 of the Business and Professions Code, relating to telehealth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as amended, Logue. Healing arts: telehealth.

Existing law requires a health care provider, as defined, prior to the delivery of health care services via telehealth, as defined, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Existing law also provides that failure to comply with this requirement constitutes unprofessional conduct.

This bill would ~~delete those provisions~~ *instead require the health care provider at the originating site to provide the patient with a waiver for the course of treatment involving telehealth services to obtain informed consent for the agreed upon course of treatment. The bill would require the signed waiver to be contained in the patient's medical record.* The bill would make additional conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1626.2 of the Business and Professions Code is amended to read:

1626.2. A dentist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5.

SEC. 2. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) *Prior to the delivery of health care via telehealth, the health care provider at the originating site shall provide the patient with a waiver for the course of treatment involving telehealth services*

1 *to obtain informed consent for the agreed upon course of treatment.*
2 *The signed waiver shall be contained in the patient's medical*
3 *record.*

4 *(c) Nothing in this section shall preclude a patient from*
5 *receiving in-person health care delivery services during a course*
6 *of treatment after agreeing to receive services via telehealth.*

7 *(d) The failure of a health care provider to comply with this*
8 *section shall constitute unprofessional conduct. Section 2314 shall*
9 *not apply to this section.*

10 ~~(b)~~

11 *(e) This section shall not be construed to alter the scope of*
12 *practice of any health care provider or authorize the delivery of*
13 *health care services in a setting, or in a manner, not otherwise*
14 *authorized by law.*

15 ~~(e)~~

16 *(f) All laws regarding the confidentiality of health care*
17 *information and a patient's rights to his or her medical information*
18 *shall apply to telehealth interactions.*

19 ~~(d)~~

20 *(g) This section shall not apply to a patient under the jurisdiction*
21 *of the Department of Corrections and Rehabilitation or any other*
22 *correctional facility.*

23 ~~(e)~~

24 *(h) (1) Notwithstanding any other provision of law and for*
25 *purposes of this section, the governing body of the hospital whose*
26 *patients are receiving the telehealth services may grant privileges*
27 *to, and verify and approve credentials for, providers of telehealth*
28 *services based on its medical staff recommendations that rely on*
29 *information provided by the distant-site hospital or telehealth*
30 *entity, as described in Sections 482.12, 482.22, and 485.616 of*
31 *Title 42 of the Code of Federal Regulations.*

32 *(2) By enacting this subdivision, it is the intent of the Legislature*
33 *to authorize a hospital to grant privileges to, and verify and approve*
34 *credentials for, providers of telehealth services as described in*
35 *paragraph (1).*

36 *(3) For the purposes of this subdivision, "telehealth" shall*
37 *include "telemedicine" as the term is referenced in Sections 482.12,*
38 *482.22, and 485.616 of Title 42 of the Code of Federal Regulations.*

39 SEC. 3. Section 4980.01 of the Business and Professions Code
40 is amended to read:

1 4980.01. (a) Nothing in this chapter shall be construed to
2 constrict, limit, or withdraw the Medical Practice Act, the Social
3 Work Licensing Law, the Nursing Practice Act, the Licensed
4 Professional Clinical Counselor Act, or the Psychology Licensing
5 Act.

6 (b) This chapter shall not apply to any priest, rabbi, or minister
7 of the gospel of any religious denomination when performing
8 counseling services as part of his or her pastoral or professional
9 duties, or to any person who is admitted to practice law in the state,
10 or who is licensed to practice medicine, when providing counseling
11 services as part of his or her professional practice.

12 (c) (1) This chapter shall not apply to an employee working in
13 any of the following settings if his or her work is performed solely
14 under the supervision of the employer:

15 (A) A governmental entity.

16 (B) A school, college, or university.

17 (C) An institution that is both nonprofit and charitable.

18 (2) This chapter shall not apply to a volunteer working in any
19 of the settings described in paragraph (1) if his or her work is
20 performed solely under the supervision of the entity, school, or
21 institution.

22 (d) A marriage and family therapist licensed under this chapter
23 is a licentiate for purposes of paragraph (2) of subdivision (a) of
24 Section 805, and thus is a health care practitioner subject to the
25 provisions of Section 2290.5.

26 (e) Notwithstanding subdivisions (b) and (c), all persons
27 registered as interns or licensed under this chapter shall not be
28 exempt from this chapter or the jurisdiction of the board.

29 SEC. 4. Section 4982 of the Business and Professions Code is
30 amended to read:

31 4982. The board may deny a license or registration or may
32 suspend or revoke the license or registration of a licensee or
33 registrant if he or she has been guilty of unprofessional conduct.
34 Unprofessional conduct includes, but is not limited to, the
35 following:

36 (a) The conviction of a crime substantially related to the
37 qualifications, functions, or duties of a licensee or registrant under
38 this chapter. The record of conviction shall be conclusive evidence
39 only of the fact that the conviction occurred. The board may inquire
40 into the circumstances surrounding the commission of the crime

1 in order to fix the degree of discipline or to determine if the
2 conviction is substantially related to the qualifications, functions,
3 or duties of a licensee or registrant under this chapter. A plea or
4 verdict of guilty or a conviction following a plea of nolo contendere
5 made to a charge substantially related to the qualifications,
6 functions, or duties of a licensee or registrant under this chapter
7 shall be deemed to be a conviction within the meaning of this
8 section. The board may order any license or registration suspended
9 or revoked, or may decline to issue a license or registration when
10 the time for appeal has elapsed, or the judgment of conviction has
11 been affirmed on appeal, or, when an order granting probation is
12 made suspending the imposition of sentence, irrespective of a
13 subsequent order under Section 1203.4 of the Penal Code allowing
14 the person to withdraw a plea of guilty and enter a plea of not
15 guilty, or setting aside the verdict of guilty, or dismissing the
16 accusation, information, or indictment.

17 (b) Securing a license or registration by fraud, deceit, or
18 misrepresentation on any application for licensure or registration
19 submitted to the board, whether engaged in by an applicant for a
20 license or registration, or by a licensee in support of any application
21 for licensure or registration.

22 (c) Administering to himself or herself any controlled substance
23 or using of any of the dangerous drugs specified in Section 4022,
24 or of any alcoholic beverage to the extent, or in a manner, as to be
25 dangerous or injurious to the person applying for a registration or
26 license or holding a registration or license under this chapter, or
27 to any other person, or to the public, or, to the extent that the use
28 impairs the ability of the person applying for or holding a
29 registration or license to conduct with safety to the public the
30 practice authorized by the registration or license. The board shall
31 deny an application for a registration or license or revoke the
32 license or registration of any person, other than one who is licensed
33 as a physician and surgeon, who uses or offers to use drugs in the
34 course of performing marriage and family therapy services.

35 (d) Gross negligence or incompetence in the performance of
36 marriage and family therapy.

37 (e) Violating, attempting to violate, or conspiring to violate any
38 of the provisions of this chapter or any regulation adopted by the
39 board.

1 (f) Misrepresentation as to the type or status of a license or
2 registration held by the person, or otherwise misrepresenting or
3 permitting misrepresentation of his or her education, professional
4 qualifications, or professional affiliations to any person or entity.

5 (g) Impersonation of another by any licensee, registrant, or
6 applicant for a license or registration, or, in the case of a licensee,
7 allowing any other person to use his or her license or registration.

8 (h) Aiding or abetting, or employing, directly or indirectly, any
9 unlicensed or unregistered person to engage in conduct for which
10 a license or registration is required under this chapter.

11 (i) Intentionally or recklessly causing physical or emotional
12 harm to any client.

13 (j) The commission of any dishonest, corrupt, or fraudulent act
14 substantially related to the qualifications, functions, or duties of a
15 licensee or registrant.

16 (k) Engaging in sexual relations with a client, or a former client
17 within two years following termination of therapy, soliciting sexual
18 relations with a client, or committing an act of sexual abuse, or
19 sexual misconduct with a client, or committing an act punishable
20 as a sexually related crime, if that act or solicitation is substantially
21 related to the qualifications, functions, or duties of a marriage and
22 family therapist.

23 (l) Performing, or holding oneself out as being able to perform,
24 or offering to perform, or permitting any trainee or registered intern
25 under supervision to perform, any professional services beyond
26 the scope of the license authorized by this chapter.

27 (m) Failure to maintain confidentiality, except as otherwise
28 required or permitted by law, of all information that has been
29 received from a client in confidence during the course of treatment
30 and all information about the client that is obtained from tests or
31 other means.

32 (n) Prior to the commencement of treatment, failing to disclose
33 to the client or prospective client the fee to be charged for the
34 professional services, or the basis upon which that fee will be
35 computed.

36 (o) Paying, accepting, or soliciting any consideration,
37 compensation, or remuneration, whether monetary or otherwise,
38 for the referral of professional clients. All consideration,
39 compensation, or remuneration shall be in relation to professional
40 counseling services actually provided by the licensee. Nothing in

1 this subdivision shall prevent collaboration among two or more
2 licensees in a case or cases. However, no fee shall be charged for
3 that collaboration, except when disclosure of the fee has been made
4 in compliance with subdivision (n).

5 (p) Advertising in a manner that is false, fraudulent, misleading,
6 or deceptive, as defined in Section 651.

7 (q) Reproduction or description in public, or in any publication
8 subject to general public distribution, of any psychological test or
9 other assessment device, the value of which depends in whole or
10 in part on the naivete of the subject, in ways that might invalidate
11 the test or device.

12 (r) Any conduct in the supervision of any registered intern,
13 associate clinical social worker, or trainee by any licensee that
14 violates this chapter or any rules or regulations adopted by the
15 board.

16 (s) Performing or holding oneself out as being able to perform
17 professional services beyond the scope of one's competence, as
18 established by one's education, training, or experience. This
19 subdivision shall not be construed to expand the scope of the
20 license authorized by this chapter.

21 (t) Permitting a trainee or registered intern under one's
22 supervision or control to perform, or permitting the trainee or
23 registered intern to hold himself or herself out as competent to
24 perform, professional services beyond the trainee's or registered
25 intern's level of education, training, or experience.

26 (u) The violation of any statute or regulation governing the
27 gaining and supervision of experience required by this chapter.

28 (v) Failure to keep records consistent with sound clinical
29 judgment, the standards of the profession, and the nature of the
30 services being rendered.

31 (w) Failure to comply with the child abuse reporting
32 requirements of Section 11166 of the Penal Code.

33 (x) Failure to comply with the elder and dependent adult abuse
34 reporting requirements of Section 15630 of the Welfare and
35 Institutions Code.

36 (y) Willful violation of Chapter 1 (commencing with Section
37 123100) of Part 1 of Division 106 of the Health and Safety Code.

38 (z) (1) Engaging in an act described in Section 261, 286, 288a,
39 or 289 of the Penal Code with a minor or an act described in
40 Section 288 or 288.5 of the Penal Code regardless of whether the

1 act occurred prior to or after the time the registration or license
2 was issued by the board. An act described in this subdivision
3 occurring prior to the effective date of this subdivision shall
4 constitute unprofessional conduct and shall subject the licensee to
5 refusal, suspension, or revocation of a license under this section.

6 (2) The Legislature hereby finds and declares that protection of
7 the public, and in particular minors, from sexual misconduct by a
8 licensee is a compelling governmental interest, and that the ability
9 to suspend or revoke a license for sexual conduct with a minor
10 occurring prior to the effective date of this section is equally
11 important to protecting the public as is the ability to refuse a license
12 for sexual conduct with a minor occurring prior to the effective
13 date of this section.

14 (aa) Engaging in any conduct that subverts or attempts to subvert
15 any licensing examination or the administration of an examination
16 as described in Section 123.

17 SEC. 5. Section 4989.54 of the Business and Professions Code
18 is amended to read:

19 4989.54. The board may deny a license or may suspend or
20 revoke the license of a licensee if he or she has been guilty of
21 unprofessional conduct. Unprofessional conduct includes, but is
22 not limited to, the following:

23 (a) Conviction of a crime substantially related to the
24 qualifications, functions, and duties of an educational psychologist.

25 (1) The record of conviction shall be conclusive evidence only
26 of the fact that the conviction occurred.

27 (2) The board may inquire into the circumstances surrounding
28 the commission of the crime in order to fix the degree of discipline
29 or to determine if the conviction is substantially related to the
30 qualifications, functions, or duties of a licensee under this chapter.

31 (3) A plea or verdict of guilty or a conviction following a plea
32 of nolo contendere made to a charge substantially related to the
33 qualifications, functions, or duties of a licensee under this chapter
34 shall be deemed to be a conviction within the meaning of this
35 section.

36 (4) The board may order a license suspended or revoked, or
37 may decline to issue a license when the time for appeal has elapsed,
38 or the judgment of conviction has been affirmed on appeal, or
39 when an order granting probation is made suspending the
40 imposition of sentence, irrespective of a subsequent order under

1 Section 1203.4 of the Penal Code allowing the person to withdraw
2 a plea of guilty and enter a plea of not guilty or setting aside the
3 verdict of guilty or dismissing the accusation, information, or
4 indictment.

5 (b) Securing a license by fraud, deceit, or misrepresentation on
6 an application for licensure submitted to the board, whether
7 engaged in by an applicant for a license or by a licensee in support
8 of an application for licensure.

9 (c) Administering to himself or herself a controlled substance
10 or using any of the dangerous drugs specified in Section 4022 or
11 an alcoholic beverage to the extent, or in a manner, as to be
12 dangerous or injurious to himself or herself or to any other person
13 or to the public or to the extent that the use impairs his or her ability
14 to safely perform the functions authorized by the license. The board
15 shall deny an application for a license or revoke the license of any
16 person, other than one who is licensed as a physician and surgeon,
17 who uses or offers to use drugs in the course of performing
18 educational psychology.

19 (d) Advertising in a manner that is false, fraudulent, misleading,
20 or deceptive, as defined in Section 651.

21 (e) Violating, attempting to violate, or conspiring to violate any
22 of the provisions of this chapter or any regulation adopted by the
23 board.

24 (f) Commission of any dishonest, corrupt, or fraudulent act
25 substantially related to the qualifications, functions, or duties of a
26 licensee.

27 (g) Denial of licensure, revocation, suspension, restriction, or
28 any other disciplinary action imposed by another state or territory
29 or possession of the United States or by any other governmental
30 agency, on a license, certificate, or registration to practice
31 educational psychology or any other healing art. A certified copy
32 of the disciplinary action, decision, or judgment shall be conclusive
33 evidence of that action.

34 (h) Revocation, suspension, or restriction by the board of a
35 license, certificate, or registration to practice as an educational
36 psychologist, a clinical social worker, professional clinical
37 counselor, or marriage and family therapist.

38 (i) Failure to keep records consistent with sound clinical
39 judgment, the standards of the profession, and the nature of the
40 services being rendered.

1 (j) Gross negligence or incompetence in the practice of
2 educational psychology.

3 (k) Misrepresentation as to the type or status of a license held
4 by the licensee or otherwise misrepresenting or permitting
5 misrepresentation of his or her education, professional
6 qualifications, or professional affiliations to any person or entity.

7 (l) Intentionally or recklessly causing physical or emotional
8 harm to any client.

9 (m) Engaging in sexual relations with a client or a former client
10 within two years following termination of professional services,
11 soliciting sexual relations with a client, or committing an act of
12 sexual abuse or sexual misconduct with a client or committing an
13 act punishable as a sexually related crime, if that act or solicitation
14 is substantially related to the qualifications, functions, or duties of
15 a licensed educational psychologist.

16 (n) Prior to the commencement of treatment, failing to disclose
17 to the client or prospective client the fee to be charged for the
18 professional services or the basis upon which that fee will be
19 computed.

20 (o) Paying, accepting, or soliciting any consideration,
21 compensation, or remuneration, whether monetary or otherwise,
22 for the referral of professional clients.

23 (p) Failing to maintain confidentiality, except as otherwise
24 required or permitted by law, of all information that has been
25 received from a client in confidence during the course of treatment
26 and all information about the client that is obtained from tests or
27 other means.

28 (q) Performing, holding himself or herself out as being able to
29 perform, or offering to perform any professional services beyond
30 the scope of the license authorized by this chapter or beyond his
31 or her field or fields of competence as established by his or her
32 education, training, or experience.

33 (r) Reproducing or describing in public, or in any publication
34 subject to general public distribution, any psychological test or
35 other assessment device the value of which depends in whole or
36 in part on the naivete of the subject in ways that might invalidate
37 the test or device. An educational psychologist shall limit access
38 to the test or device to persons with professional interests who can
39 be expected to safeguard its use.

1 (s) Aiding or abetting an unlicensed person to engage in conduct
2 requiring a license under this chapter.

3 (t) When employed by another person or agency, encouraging,
4 either orally or in writing, the employer's or agency's clientele to
5 utilize his or her private practice for further counseling without
6 the approval of the employing agency or administration.

7 (u) Failing to comply with the child abuse reporting
8 requirements of Section 11166 of the Penal Code.

9 (v) Failing to comply with the elder and adult dependent abuse
10 reporting requirements of Section 15630 of the Welfare and
11 Institutions Code.

12 (w) Willful violation of Chapter 1 (commencing with Section
13 123100) of Part 1 of Division 106 of the Health and Safety Code.

14 (x) (1) Engaging in an act described in Section 261, 286, 288a,
15 or 289 of the Penal Code with a minor or an act described in
16 Section 288 or 288.5 of the Penal Code regardless of whether the
17 act occurred prior to or after the time the registration or license
18 was issued by the board. An act described in this subdivision
19 occurring prior to the effective date of this subdivision shall
20 constitute unprofessional conduct and shall subject the licensee to
21 refusal, suspension, or revocation of a license under this section.

22 (2) The Legislature hereby finds and declares that protection of
23 the public, and in particular minors, from sexual misconduct by a
24 licensee is a compelling governmental interest, and that the ability
25 to suspend or revoke a license for sexual conduct with a minor
26 occurring prior to the effective date of this section is equally
27 important to protecting the public as is the ability to refuse a license
28 for sexual conduct with a minor occurring prior to the effective
29 date of this section.

30 (y) Engaging in any conduct that subverts or attempts to subvert
31 any licensing examination or the administration of the examination
32 as described in Section 123.

33 (z) Impersonation of another by any licensee or applicant for a
34 license, or, in the case of a licensee, allowing any other person to
35 use his or her license.

36 (aa) Permitting a person under his or her supervision or control
37 to perform, or permitting that person to hold himself or herself out
38 as competent to perform, professional services beyond the level
39 of education, training, or experience of that person.

1 SEC. 6. Section 4992.3 of the Business and Professions Code
2 is amended to read:

3 4992.3. The board may deny a license or a registration, or may
4 suspend or revoke the license or registration of a licensee or
5 registrant if he or she has been guilty of unprofessional conduct.
6 Unprofessional conduct includes, but is not limited to, the
7 following:

8 (a) The conviction of a crime substantially related to the
9 qualifications, functions, or duties of a licensee or registrant under
10 this chapter. The record of conviction shall be conclusive evidence
11 only of the fact that the conviction occurred. The board may inquire
12 into the circumstances surrounding the commission of the crime
13 in order to fix the degree of discipline or to determine if the
14 conviction is substantially related to the qualifications, functions,
15 or duties of a licensee or registrant under this chapter. A plea or
16 verdict of guilty or a conviction following a plea of nolo contendere
17 made to a charge substantially related to the qualifications,
18 functions, or duties of a licensee or registrant under this chapter
19 is a conviction within the meaning of this section. The board may
20 order any license or registration suspended or revoked, or may
21 decline to issue a license or registration when the time for appeal
22 has elapsed, or the judgment of conviction has been affirmed on
23 appeal, or, when an order granting probation is made suspending
24 the imposition of sentence, irrespective of a subsequent order under
25 Section 1203.4 of the Penal Code allowing the person to withdraw
26 a plea of guilty and enter a plea of not guilty, or setting aside the
27 verdict of guilty, or dismissing the accusation, information, or
28 indictment.

29 (b) Securing a license or registration by fraud, deceit, or
30 misrepresentation on any application for licensure or registration
31 submitted to the board, whether engaged in by an applicant for a
32 license or registration, or by a licensee in support of any application
33 for licensure or registration.

34 (c) Administering to himself or herself any controlled substance
35 or using any of the dangerous drugs specified in Section 4022 or
36 any alcoholic beverage to the extent, or in a manner, as to be
37 dangerous or injurious to the person applying for a registration or
38 license or holding a registration or license under this chapter, or
39 to any other person, or to the public, or, to the extent that the use
40 impairs the ability of the person applying for or holding a

1 registration or license to conduct with safety to the public the
2 practice authorized by the registration or license. The board shall
3 deny an application for a registration or license or revoke the
4 license or registration of any person who uses or offers to use drugs
5 in the course of performing clinical social work. This provision
6 does not apply to any person also licensed as a physician and
7 surgeon under Chapter 5 (commencing with Section 2000) or the
8 Osteopathic Act who lawfully prescribes drugs to a patient under
9 his or her care.

10 (d) Incompetence in the performance of clinical social work.

11 (e) An act or omission that falls sufficiently below the standard
12 of conduct of the profession as to constitute an act of gross
13 negligence.

14 (f) Violating, attempting to violate, or conspiring to violate this
15 chapter or any regulation adopted by the board.

16 (g) Misrepresentation as to the type or status of a license or
17 registration held by the person, or otherwise misrepresenting or
18 permitting misrepresentation of his or her education, professional
19 qualifications, or professional affiliations to any person or entity.
20 For purposes of this subdivision, this misrepresentation includes,
21 but is not limited to, misrepresentation of the person's
22 qualifications as an adoption service provider pursuant to Section
23 8502 of the Family Code.

24 (h) Impersonation of another by any licensee, registrant, or
25 applicant for a license or registration, or, in the case of a licensee,
26 allowing any other person to use his or her license or registration.

27 (i) Aiding or abetting any unlicensed or unregistered person to
28 engage in conduct for which a license or registration is required
29 under this chapter.

30 (j) Intentionally or recklessly causing physical or emotional
31 harm to any client.

32 (k) The commission of any dishonest, corrupt, or fraudulent act
33 substantially related to the qualifications, functions, or duties of a
34 licensee or registrant.

35 (l) Engaging in sexual relations with a client or with a former
36 client within two years from the termination date of therapy with
37 the client, soliciting sexual relations with a client, or committing
38 an act of sexual abuse, or sexual misconduct with a client, or
39 committing an act punishable as a sexually related crime, if that

1 act or solicitation is substantially related to the qualifications,
2 functions, or duties of a clinical social worker.

3 (m) Performing, or holding one's self out as being able to
4 perform, or offering to perform or permitting, any registered
5 associate clinical social worker or intern under supervision to
6 perform any professional services beyond the scope of one's
7 competence, as established by one's education, training, or
8 experience. This subdivision shall not be construed to expand the
9 scope of the license authorized by this chapter.

10 (n) Failure to maintain confidentiality, except as otherwise
11 required or permitted by law, of all information that has been
12 received from a client in confidence during the course of treatment
13 and all information about the client that is obtained from tests or
14 other means.

15 (o) Prior to the commencement of treatment, failing to disclose
16 to the client or prospective client the fee to be charged for the
17 professional services, or the basis upon which that fee will be
18 computed.

19 (p) Paying, accepting, or soliciting any consideration,
20 compensation, or remuneration, whether monetary or otherwise,
21 for the referral of professional clients. All consideration,
22 compensation, or remuneration shall be in relation to professional
23 counseling services actually provided by the licensee. Nothing in
24 this subdivision shall prevent collaboration among two or more
25 licensees in a case or cases. However, no fee shall be charged for
26 that collaboration, except when disclosure of the fee has been made
27 in compliance with subdivision (o).

28 (q) Advertising in a manner that is false, fraudulent, misleading,
29 or deceptive, as defined in Section 651.

30 (r) Reproduction or description in public, or in any publication
31 subject to general public distribution, of any psychological test or
32 other assessment device, the value of which depends in whole or
33 in part on the naivete of the subject, in ways that might invalidate
34 the test or device. A licensee shall limit access to that test or device
35 to persons with professional interest who are expected to safeguard
36 its use.

37 (s) Any conduct in the supervision of any registered associate
38 clinical social worker, intern, or trainee by any licensee that violates
39 this chapter or any rules or regulations adopted by the board.

1 (t) Failure to keep records consistent with sound clinical
2 judgment, the standards of the profession, and the nature of the
3 services being rendered.

4 (u) Failure to comply with the child abuse reporting
5 requirements of Section 11166 of the Penal Code.

6 (v) Failure to comply with the elder and dependent adult abuse
7 reporting requirements of Section 15630 of the Welfare and
8 Institutions Code.

9 (w) Willful violation of Chapter 1 (commencing with Section
10 123100) of Part 1 of Division 106 of the Health and Safety Code.

11 (x) (1) Engaging in an act described in Section 261, 286, 288a,
12 or 289 of the Penal Code with a minor or an act described in
13 Section 288 or 288.5 of the Penal Code regardless of whether the
14 act occurred prior to or after the time the registration or license
15 was issued by the board. An act described in this subdivision
16 occurring prior to the effective date of this subdivision shall
17 constitute unprofessional conduct and shall subject the licensee to
18 refusal, suspension, or revocation of a license under this section.

19 (2) The Legislature hereby finds and declares that protection of
20 the public, and in particular minors, from sexual misconduct by a
21 licensee is a compelling governmental interest, and that the ability
22 to suspend or revoke a license for sexual conduct with a minor
23 occurring prior to the effective date of this section is equally
24 important to protecting the public as is the ability to refuse a license
25 for sexual conduct with a minor occurring prior to the effective
26 date of this section.

27 (y) Engaging in any conduct that subverts or attempts to subvert
28 any licensing examination or the administration of the examination
29 as described in Section 123.

30 SEC. 7. Section 4996 of the Business and Professions Code is
31 amended to read:

32 4996. (a) Only individuals who have received a license under
33 this article may style themselves as “Licensed Clinical Social
34 Workers.” Every individual who styles himself or herself or who
35 holds himself or herself out to be a licensed clinical social worker,
36 or who uses any words or symbols indicating or tending to indicate
37 that he or she is a licensed clinical social worker, without holding
38 his or her license in good standing under this article, is guilty of a
39 misdemeanor.

1 (b) It is unlawful for any person to engage in the practice of
2 clinical social work unless at the time of so doing that person holds
3 a valid, unexpired, and unrevoked license under this article.

4 (c) A clinical social worker licensed under this chapter is a
5 licentiate for purposes of paragraph (2) of subdivision (a) of Section
6 805, and thus is a health care practitioner subject to the provisions
7 of Section 2290.5.

8 SEC. 8. Section 4999.90 of the Business and Professions Code
9 is amended to read:

10 4999.90. The board may refuse to issue any registration or
11 license, or may suspend or revoke the registration or license of
12 any intern or licensed professional clinical counselor, if the
13 applicant, licensee, or registrant has been guilty of unprofessional
14 conduct. Unprofessional conduct includes, but is not limited to,
15 the following:

16 (a) The conviction of a crime substantially related to the
17 qualifications, functions, or duties of a licensee or registrant under
18 this chapter. The record of conviction shall be conclusive evidence
19 only of the fact that the conviction occurred. The board may inquire
20 into the circumstances surrounding the commission of the crime
21 in order to fix the degree of discipline or to determine if the
22 conviction is substantially related to the qualifications, functions,
23 or duties of a licensee or registrant under this chapter. A plea or
24 verdict of guilty or a conviction following a plea of nolo contendere
25 made to a charge substantially related to the qualifications,
26 functions, or duties of a licensee or registrant under this chapter
27 shall be deemed to be a conviction within the meaning of this
28 section. The board may order any license or registration suspended
29 or revoked, or may decline to issue a license or registration when
30 the time for appeal has elapsed, or the judgment of conviction has
31 been affirmed on appeal, or, when an order granting probation is
32 made suspending the imposition of sentence, irrespective of a
33 subsequent order under Section 1203.4 of the Penal Code allowing
34 the person to withdraw a plea of guilty and enter a plea of not
35 guilty, or setting aside the verdict of guilty, or dismissing the
36 accusation, information, or indictment.

37 (b) Securing a license or registration by fraud, deceit, or
38 misrepresentation on any application for licensure or registration
39 submitted to the board, whether engaged in by an applicant for a

1 license or registration, or by a licensee in support of any application
2 for licensure or registration.

3 (c) Administering to himself or herself any controlled substance
4 or using any of the dangerous drugs specified in Section 4022, or
5 any alcoholic beverage to the extent, or in a manner, as to be
6 dangerous or injurious to the person applying for a registration or
7 license or holding a registration or license under this chapter, or
8 to any other person, or to the public, or, to the extent that the use
9 impairs the ability of the person applying for or holding a
10 registration or license to conduct with safety to the public the
11 practice authorized by the registration or license. The board shall
12 deny an application for a registration or license or revoke the
13 license or registration of any person, other than one who is licensed
14 as a physician and surgeon, who uses or offers to use drugs in the
15 course of performing licensed professional clinical counseling
16 services.

17 (d) Gross negligence or incompetence in the performance of
18 licensed professional clinical counseling services.

19 (e) Violating, attempting to violate, or conspiring to violate any
20 of the provisions of this chapter or any regulation adopted by the
21 board.

22 (f) Misrepresentation as to the type or status of a license or
23 registration held by the person, or otherwise misrepresenting or
24 permitting misrepresentation of his or her education, professional
25 qualifications, or professional affiliations to any person or entity.

26 (g) Impersonation of another by any licensee, registrant, or
27 applicant for a license or registration, or, in the case of a licensee
28 or registrant, allowing any other person to use his or her license
29 or registration.

30 (h) Aiding or abetting, or employing, directly or indirectly, any
31 unlicensed or unregistered person to engage in conduct for which
32 a license or registration is required under this chapter.

33 (i) Intentionally or recklessly causing physical or emotional
34 harm to any client.

35 (j) The commission of any dishonest, corrupt, or fraudulent act
36 substantially related to the qualifications, functions, or duties of a
37 licensee or registrant.

38 (k) Engaging in sexual relations with a client, or a former client
39 within two years following termination of therapy, soliciting sexual
40 relations with a client, or committing an act of sexual abuse, or

1 sexual misconduct with a client, or committing an act punishable
2 as a sexually related crime, if that act or solicitation is substantially
3 related to the qualifications, functions, or duties of a licensed
4 professional clinical counselor.

5 (l) Performing, or holding oneself out as being able to perform,
6 or offering to perform, or permitting any trainee, applicant, or
7 registrant under supervision to perform, any professional services
8 beyond the scope of the license authorized by this chapter.

9 (m) Failure to maintain confidentiality, except as otherwise
10 required or permitted by law, of all information that has been
11 received from a client in confidence during the course of treatment
12 and all information about the client which is obtained from tests
13 or other means.

14 (n) Prior to the commencement of treatment, failing to disclose
15 to the client or prospective client the fee to be charged for the
16 professional services, or the basis upon which that fee will be
17 computed.

18 (o) Paying, accepting, or soliciting any consideration,
19 compensation, or remuneration, whether monetary or otherwise,
20 for the referral of professional clients. All consideration,
21 compensation, or remuneration shall be in relation to professional
22 clinical counseling services actually provided by the licensee.
23 Nothing in this subdivision shall prevent collaboration among two
24 or more licensees in a case or cases. However, no fee shall be
25 charged for that collaboration, except when disclosure of the fee
26 has been made in compliance with subdivision (n).

27 (p) Advertising in a manner that is false, fraudulent, misleading,
28 or deceptive, as defined in Section 651.

29 (q) Reproduction or description in public, or in any publication
30 subject to general public distribution, of any psychological test or
31 other assessment device, the value of which depends in whole or
32 in part on the naivete of the subject, in ways that might invalidate
33 the test or device.

34 (r) Any conduct in the supervision of a registered intern,
35 associate clinical social worker, or clinical counselor trainee by
36 any licensee that violates this chapter or any rules or regulations
37 adopted by the board.

38 (s) Performing or holding oneself out as being able to perform
39 professional services beyond the scope of one's competence, as
40 established by one's education, training, or experience. This

1 subdivision shall not be construed to expand the scope of the
2 license authorized by this chapter.

3 (t) Permitting a clinical counselor trainee or intern under one's
4 supervision or control to perform, or permitting the clinical
5 counselor trainee or intern to hold himself or herself out as
6 competent to perform, professional services beyond the clinical
7 counselor trainee's or intern's level of education, training, or
8 experience.

9 (u) The violation of any statute or regulation of the standards
10 of the profession, and the nature of the services being rendered,
11 governing the gaining and supervision of experience required by
12 this chapter.

13 (v) Failure to keep records consistent with sound clinical
14 judgment, the standards of the profession, and the nature of the
15 services being rendered.

16 (w) Failure to comply with the child abuse reporting
17 requirements of Section 11166 of the Penal Code.

18 (x) Failing to comply with the elder and dependent adult abuse
19 reporting requirements of Section 15630 of the Welfare and
20 Institutions Code.

21 (y) Repeated acts of negligence.

22 (z) (1) Engaging in an act described in Section 261, 286, 288a,
23 or 289 of the Penal Code with a minor or an act described in
24 Section 288 or 288.5 of the Penal Code regardless of whether the
25 act occurred prior to or after the time the registration or license
26 was issued by the board. An act described in this subdivision
27 occurring prior to the effective date of this subdivision shall
28 constitute unprofessional conduct and shall subject the licensee to
29 refusal, suspension, or revocation of a license under this section.

30 (2) The Legislature hereby finds and declares that protection of
31 the public, and in particular minors, from sexual misconduct by a
32 licensee is a compelling governmental interest, and that the ability
33 to suspend or revoke a license for sexual conduct with a minor
34 occurring prior to the effective date of this section is equally
35 important to protecting the public as is the ability to refuse a license
36 for sexual conduct with a minor occurring prior to the effective
37 date of this section.

38 (aa) Engaging in any conduct that subverts or attempts to subvert
39 any licensing examination or the administration of an examination
40 as described in Section 123.

1 (ab) Revocation, suspension, or restriction by the board of a
2 license, certificate, or registration to practice as a professional
3 clinical counselor, clinical social worker, educational psychologist,
4 or marriage and family therapist.

5 (ac) Willful violation of Chapter 1 (commencing with Section
6 123100) of Part 1 of Division 106 of the Health and Safety Code.

7 SEC. 9. This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety within
9 the meaning of Article IV of the Constitution and shall go into
10 immediate effect. The facts constituting the necessity are:

11 In order to protect the health and safety of the public due to a
12 lack of access to health care providers in rural and urban medically
13 underserved areas of California, the increasing strain on existing
14 providers expected to occur with the implementation of the federal
15 Patient Protection and Affordable Care Act, and the assistance that
16 further implementation of telehealth can provide to help relieve
17 these burdens, it is necessary for this act to take effect immediately.